HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JERARDO RODRIGUEZ, Plaintiff, v. JUDY LARABEE, et al., Defendant.	CASE NO. C16-446-RSM ORDER

THIS MATTER is before the Court on review of Chief Judge Ricardo Martinez's Order [Dkt. #51] declining to recuse himself in response to *pro se* Plaintiff Jerardo Rodriguez's Motion for Recusal [Dkt. #42]. The Order was referred to this Court as the most senior non-Chief Judge under 28 U.S.C. § 144 and LCR 3(e).

Judge Martinez dismissed Rodriguez's complaint without prejudice on Defendant's motion, but gave Rodriguez 15 days to file an amended complaint. [Dkt. #35] He determined that the complaint did not state a plausible claim.

A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Id*. Although the Court must accept as true the Complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c) motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); S*prewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted). This requires a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me-accusation." *Iqbal*, 129 S. Ct. at 1949 (*citing Twombly*).

Rodriguez's Motion claims that he has met this standard, especially considering that he is *pro se*. He argues that he is entitled to a fair trial and that if Judge Martinez cannot (in Rodriguez's eyes) provide one, he should recuse himself.

A federal judge should recuse himself if "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." 28 U.S.C. § 144; *see also* 28 U.S.C. § 455; *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir. 1993). This objective inquiry is concerned with whether there is the appearance of bias, not whether there is bias in fact. *See Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1992); *see also United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980).). In the absence of specific allegations of personal bias, prejudice, or interest, neither prior adverse rulings of a judge nor his participation in a related or prior proceeding is sufficient" to establish bias. *Davis v. Fendler*, 650 F.2d 1154, 1163 (9th Cir. 1981). Judicial rulings alone "almost never" constitute a valid basis for a bias or partiality motion. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Rodriguez's recusal request does not identify or claim any personal bias, prejudice or interest. It is based instead on the claim that Judge Martinez erred in requiring an amended complaint. Even if he had, that is not a basis for recusal.

Rodriguez's Motion for Recusal [Dkt. #42] is DENIED, and Judge Martinez's Order Declining to Recuse [Dkt. #51] is AFFIRMED.

IT IS SO ORDERED.

Dated this 5th day of October, 2016.

Ronald B. Leighton
United States District Judge